

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
PHILIP E. DEBLASIO,

Plaintiff,

against

LEONARD SMITH and A. MANDERSON,

Defendants.

CIVIL ACTION NO.: 18 Civ. 6841 (AJN) (SLC)

ORDER

SARAH L. CAVE, United States Magistrate Judge.

A Telephone Conference was held today, February 19, 2020 regarding Mr. DeBlasio's continued noncompliance with the Court's orders and possible dismissal of his complaint for failure to prosecute. Mr. DeBlasio stated on the record multiple times that he wants to dismiss the case because he does not know whom to sue. The Court invited him seek assistance from the Pro Se Clinic, but he refused. The Court informed him that, based on his statements, his case may be dismissed with prejudice, meaning that he could not bring the same claims again. Mr. DeBlasio confirmed that he understood the consequences of his decision.¹

At a plaintiff's request, an action may be dismissed by court order "on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). "Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice." Id.

Mr. DeBlasio has failed to comply with numerous Court orders. On April 15, 2019, Defendants filed a motion to dismiss the complaint. (ECF No. 21). The Honorable Alison J. Nathan

¹ The undersigned has requested that the transcript be filed on the docket.

granted Mr. DeBlasio leave to file an amended complaint by November 1, 2019. (ECF No. 38). He did not file an amended complaint. Mr. DeBlasio was ordered to show cause by Wednesday, December 18, 2019 for his failure to comply with Judge Nathan's order. (ECF No. 39). Again, he did not respond. Mr. DeBlasio was ordered to show cause by Friday, January 31, 2020 why this case should not be dismissed under Rule 41(b) of the Federal Rules of Civil Procedure for failure to prosecute. (ECF No. 40). He was informed that failure to show good cause by January 31, 2020 could lead to a dismissal of his complaint for failure to prosecute. (Id.) Again, he did not respond.

Because of Mr. DeBlasio's continued failure to comply with the Court's orders and his repeated statement on the record at today's conference that he wants to dismiss this case, I respectfully recommend that this action be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2).

The Clerk of Court is respectfully directed to mail this order to the address below.

Dated: New York, New York
February 19, 2020

SO ORDERED


SARAH L. CAVE
United States Magistrate Judge

Mail to: Philip E. DeBlasio
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CORRECTIONAL FACILITY
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